REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

CARGILL PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 6714 & 7262

Members:

ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

APR 20 2011 ; 11:20 am

x- -x

AMENDED DECISION

CASANOVA, *J.*:

For resolution are:

1) respondent's **Motion to Dismiss** filed on January 19, 2011, with petitioner's **Comment (To Respondent's Motion to Dismiss)** filed on February 21, 2011;

2) respondent's **Motion for Reconsideration (Decision Promulgated on August 24, 2010)** filed on September 15, 2010, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Reconsideration)** filed on October 26, 2010; and

3) petitioner's **Motion for Reconsideration** filed on September 13, 2010, and **Supplement to Petitioner's Motion for**

Reconsideration filed on December 29, 2010, without respondent filing comments to both pleadings.

We shall first address respondent's Motions.

A perusal of respondent's Motion for Reconsideration, filed on September 15, 2010, reveals that, as correctly pointed out by the petitioner, the same lacks the Notice of Hearing required under Section 5, Rule 15 of the 1997 Rules of Civil Procedure, which provides thus:

> "Section 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

Petitioner, further, correctly argued that "the absence of a notice of hearing is a procedural defect that renders Respondent's Motion a worthless scrap of paper." The Supreme Court, elucidating on the matter, ruled in this wise:

> "As a Rule, every written motion shall be set for hearing by the applicants (Section 4, Rule 15, Rules of Court). x x x.
>
> x x x   x x x   x x x
>
> The Court has consistently held that a motion which does not meet the requirements of Section 4 and 5 of Rule 15 of the Rules of Court on hearing and notice of hearing is a mere scrap of paper, which the clerk of court has no right to receive and the trial court has no authority to act upon. Service of a copy of a motion is a mandatory requirement, and failure of movants to comply with these requirements renders their motions fatally defective *(Vetle Industrial Sales Co., Inv. Vs. Cheng, G.R. Nos. 170232-170301, December 5, 2006).*"

Since respondent's Motion for Reconsideration lacks the mandatory Notice of Hearing the same must, therefore, be denied.

Proceeding to respondent's Motion to Dismiss, respondent argues that this Court is bereft of jurisdiction to try the cases on the ground that the consolidated Petitions for Review were prematurely filed due to its failure to exhaust administrative remedies; that, in accordance with Section 1, Rule 9 of the Rules of Civil Procedure, as amended, the defense of lack of jurisdiction over the subject matter can be raised anytime even for the first time on appeal.

Petitioner, on the other hand, counter-argues that: this Honorable Court's Decision is final as far as respondent is concerned because its Motion for Reconsideration is fatally defective due to the absence of a notice of hearing in violation of Sections 4 and 5, Rule 15 of the 1997 Rules of Civil Procedure, as amended; that the instant cases fall within the jurisdiction of this Court because they involve respondent's inaction on petitioner's claims for the refund of unutilized input VAT; that its failure to comply with the 120-day period provided in Section 112(C) of the NIRC of 1997, as amended, does not deprive this Court of its jurisdiction to try cases involving claims for refund of excess input VAT; that assuming *arguendo* that the 120-day period is mandatory, respondent must be deemed to have waived the defense of prematurity for her failure to raise the same in her Answer; that, since respondent's ground for dismissal arose only after this case had already been filed with and decided upon by this Court, respondent cannot ask this Court to apply the Aichi case without violating the prohibition against retroactive application of laws.

While it is true that the ground to dismiss based on lack of jurisdiction maybe raised anytime pursuant to Section 1, Rule 9 of the Rules of Court, the same, however, is not without exceptions.

In a number of cases decided by the Supreme Court it was held that although the issue of jurisdiction may be raised at any stage of the proceedings as the same is conferred by law, it is nonetheless settled that a party may be barred from raising it on the ground of laches or estoppel.[1] While lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question maybe estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.[2]

In the case at hand, respondent has actively participated in all stages of the proceedings by filing all the necessary pleadings and taking part in the trial of the case.

It was only on January 19, 2011, or five months after the Decision was promulgated did the respondent file the instant Motion to Dismiss. Respondent never pleaded nor raised the defense of lack of jurisdiction in its Answers/Amended in both cases (i.e. Case No. 6714 and 7262). The said defense was first raised in respondent's Motion for Reconsideration which we have earlier denied for lack of the mandatory Notice of Hearing.

For all the foregoing disquisition, respondent's Motion to Dismiss is **DENIED** on the ground of estoppel.

The Court now proceeds to resolve petitioner's Motion for Reconsideration.

Petitioner seeks to reconsider the same Decision and prays that this Court "reverse its ruling: (a) requiring Petitioner to substantiate with invoices and receipts the input VAT from the 4th quarter of 2000 amounting to Php21,633,716.56; and (b) disallowing Petitioner's advance payment of VAT on the sale of refined sugar amounting to Php14,195,983.19 (or, in the alternative, allow Petitioner to submit additional proof confirming the receipt by the BIR of the advance VAT payment of Php14,195,983.19)." Petitioner further prays that the grant of refund of excess input tax of Php3,053,469.99 be increased.

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[1] Pantranco North Express, Inc. vs. Court of Appeals, G.R. No. 105180, July 5, 1993

[2] National Steel Corporation vs. Court of Appeals, G.R. No. 123215, February 2, 1999 (citing Martinez vs. Dela Merced, 174 SCRA 182 (1989)

In its Motion, petitioner argues that: 1) the substantiation of Php21,633,716.56 (representing excess input VAT carried over from the 4th quarter of 2000), through the presentation of invoices and receipts, does not form part of the requisites necessary to entitle petitioner to a refund; and 2) the disallowed Payment Forms sufficiently established the advance payment of VAT on the sale of refined sugar in the amount of Php14,195,983.19.

After a careful evaluation and consideration of the facts as well as jurisprudence on the matter, this Court finds petitioner's Motion unmeritorious.

In Our Decision dated May 31, 2010, We have ruled as follows:

> "Although in the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)** the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the Mirant case in view of the numerous rulings of the Supreme Court upholding the prospective application of decisions."

However, in the light of the most recent ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (the "Aichi Case")[3], which reiterated the ruling in the Mirant case, We are constrained to reconsider Our ruling in our August 24, 2010 Decision.

The above-mentioned Aichi case not only reiterated the ruling in the Mirant case [where it was held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made] but went further by stating that the 120-day period provided under Section 112(D) of the 1997 Tax Code, as amended, must be observed before

[3] G.R. 184823, October 6, 2010

filing a judicial claim. Otherwise, the taxpayer runs the risk of having the judicial claim dismissed on the ground of premature filing.

The Supreme Court rules as follows:

> "However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112 (D) of the NIRC, which provides that:
>
> > SEC. 112. Refunds or Tax Credits on Input Tax.-
> >
> > xxxx
> >
> > (D) Period within which Refund or Tax Credit of Input Taxes shall be made.- In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
> >
> > In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis supplied)
>
> Section 112 (D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on

> the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period, for this reason, we find the filing of the judicial claim with the CTA premature.
>
> xxx xxx xxx
>
> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

In the instant case, records show that petitioner filed its administrative claim and Petitions for Review (judicial claim) as follows:

Covered Period	CTA Case No.	Administrative Claim	Petition for Review
April 1, 2001 to February 28, 2003	6714	June 27, 2003	June 30, 2003
March 1, 2003 to August 31, 2004	7262	May 31, 2005	May 31, 2005

Applying, therefore, the Aichi ruling petitioner's administrative claim for the period covering April 1, 2001 to February 28, 2003 was timely filed while its judicial claim via Petition for Review filed with this Court (CTA Case No. 6714) was prematurely filed.

With regard to petitioner's administrative claim for the period covering March 1, 2003 to August 31, 2004, its claim for the quarter ending March 1, 2003, which should have been filed not later than March 30, 2005, was filed only on May 31, 2005, or beyond the two-year prescriptive period. Its Petition for Review, having been filed on the same day as the administrative claim, or on May 31, 2005, was clearly prematurely filed.

In view thereof, petitioner's Motion for Reconsideration must necessarily be denied.

WHEREFORE, premises considered, respondent's Motion for Reconsideration dated September 14, 2010 is hereby **DISMISSED** for lack of Notice of Hearing; and the Motion to Dismiss is **DENIED** on the ground of estoppel.

Petitioner's Motion for Reconsideration is hereby **DENIED**. Consequently, the Decision dated August 24, 2010 is hereby **REVERSED** and the Petition for Review docketed as CTA Case No. 6714 is hereby **DISMISSED** on the ground that the judicial claim was prematurely filed. The Petition for Review docketed as CTA Case No. 7262 is, likewise, hereby **DISMISSED** due to prescription (the claim for the period ending March 1, 2003) and premature filing of its judicial claim.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(I maintain my vote as promulgated by this Court in its Decision dated August 24, 2010)
LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice